

APPEAL NO. 040558
FILED APRIL 29, 2004

This appeal on remand arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 26, 2003. The hearing officer determined that the appellant's (claimant) _____, compensable injury does not extend to include an injury to her cervical spine. The claimant appealed that determination and the Appeals Panel remanded the case for reconstruction of the record. At the hearing on remand held on February 13, 2004, at the same location, with the same hearing officer presiding, the hearing officer reconstructed the record from her notes from the prior hearing. The parties indicated that the hearing officer's reconstruction of the record was accurate and complete. In the decision on remand, the hearing officer made the same determination as she had previously. The claimant appeals the hearing officer's decision and asserts that she did not receive a fair and impartial hearing. The appeal file contains no response from the respondent (self-insured).

DECISION

Affirmed.

Extent of injury was a factual question for the hearing officer to resolve. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). It was the hearing officer's prerogative to believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The claimant also asserts that she did not receive a fair and impartial hearing based on the fact that the hearing officer referred to the self-insured's attorney on a first name basis. The record from the hearing on remand reflects that the hearing officer never referred to the attorney by his first name. Assuming that during the course of the hearing proceedings, the hearing officer did refer to the attorney by his first name, such familiarity would not, in and of itself, demonstrate bias. However, conduct giving rise to the appearance of partiality should be avoided.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**CITY SECRETARY
(ADDRESS)
(CITY) TEXAS (ZIP CODE).**

Chris Cowan
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Michael B. McShane
Appeals Panel
Manager/Judge